

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 974

Introduced by Assembly Member Audra Strickland

February 26, 2009

An act to add Sections ~~48950.1 and 48950.2~~ *48950.1, 48950.2, and 48950.3* to the Education Code, relating to pupil rights, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 974, as amended, Audra Strickland. Pupil rights: religious expression.

Existing law prohibits school districts operating one or more high schools and private secondary schools from making or enforcing a rule subjecting a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution. Existing law provides that pupils of the public schools have the right to exercise freedom of speech and of the press, including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, and the right of expression in official publications, whether or not the publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Existing law requires each governing board of a school district and each county board of education to adopt rules and regulations in the form of a written publications code, that shall include reasonable provisions for the time,

place, and manner of conducting these activities within its respective jurisdiction.

This bill, the Religious Viewpoints Antidiscrimination Act or the Schoolchildren's Religious Liberties Act would require a school district to treat a pupil's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a pupil's voluntary expression of a secular or other viewpoint and prohibit discrimination against a pupil based on the religious viewpoint expressed.

This bill would require a district to adopt a policy that must include the establishment of a limited public forum for student speakers at all school events at which a pupil may speak publicly, as specified. This bill would provide that pupils have the right to express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions and to organize prayer groups or religious clubs or gatherings before, during, and after school to the same extent that pupils are permitted to organize other noncurricular student activities and groups. This bill would also require religious groups to be given the same access to school facilities for assembling as is given to other noncurricular groups without discrimination based on the religious content of the pupils' expression and advertise or announce meetings of the groups.

If pupil groups that meet for nonreligious activities are permitted to *meet*, the school district may not discriminate against groups that meet for prayer or other religious speech. The bill would allow school districts to disclaim school sponsorship of noncurricular groups and events in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech. The bill would also provide that if a school district adopts and follows a model policy governing voluntary religious expression in public schools as specified, the district is in compliance with the provisions of the act covered by the model policy.

The bill would also provide that a pupil who is enrolled at a school in a school district at the time that the school or school district has made or enforced a rule in violation of these provisions, or the parent or legal guardian of the pupil, may commence a civil action to obtain appropriate injunctive and declaratory relief, and damages, as specified. The bill would also provide that any person who denies the rights described above to a pupil is liable for each and every instance for

actual and exemplary damages in an amount to be determined for not less than \$4,000 nor more than \$25,000 per occurrence.

The bill would also specify that these provisions do not apply to a private secondary school that is controlled by a religious organization.

Because this bill would require school districts to perform additional duties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it would take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Religious Viewpoints Antidiscrimination Act.

3 SEC. 2. Section 48950.1 is added to the Education Code, to
4 read:

5 48950.1. (a) A school district shall treat a pupil’s voluntary
6 expression of a religious viewpoint, if any, on an otherwise
7 permissible subject in the same manner the district treats a pupil’s
8 voluntary expression of a secular or other viewpoint on an
9 otherwise permissible subject and may not discriminate against
10 the pupil based on a religious viewpoint expressed by the pupil on
11 an otherwise permissible subject.

12 (b) To ensure that the school district does not discriminate
13 against a pupil’s publicly stated voluntary expression of a religious
14 viewpoint, if any, and to eliminate any actual or perceived
15 affirmative school sponsorship or attribution to the district of a
16 pupil’s expression of a religious viewpoint, if any, a school district
17 shall adopt a policy that includes the establishment of a limited
18 public forum for student speakers at all school events at which a
19 pupil may speak publicly. The policy regarding the limited public
20 forum must also require the school district to:

1 (1) Provide the forum in a manner that does not discriminate
2 against a pupil's voluntary expression of a religious viewpoint, if
3 any, on an otherwise permissible subject.

4 (2) Provide a method, based on neutral criteria, for the selection
5 of pupil speakers at school events and graduation ceremonies.

6 (3) Ensure that a pupil speaker does not engage in obscene,
7 vulgar, offensively lewd, or indecent speech.

8 (4) State, in writing, that the pupil's speech does not reflect the
9 endorsement, sponsorship, position, or expression of the district.

10 (c) The school district disclaimer required by paragraph (4) of
11 subdivision (b) shall be provided at all graduation ceremonies. The
12 school district shall also continue to provide the disclaimer at any
13 other event in which a pupil speaks publicly for as long as a need
14 exists to dispel confusion over the district's nonsponsorship of the
15 pupil's speech.

16 (d) Pupil expression on an otherwise permissible subject may
17 not be excluded from the limited public forum because the subject
18 is expressed from a religious viewpoint.

19 (e) Pupils may express their beliefs about religion in homework,
20 artwork, and other written and oral assignments free from
21 discrimination based on the religious content of their submissions.
22 Homework and classroom assignments shall be judged by ordinary
23 academic standards of substance and relevance and against other
24 legitimate pedagogical concerns identified by the school district.
25 Pupils shall not be penalized or rewarded on account of the
26 religious content of their work.

27 (f) Pupils may organize prayer groups, religious clubs, "see you
28 at the pole" gatherings, or other religious gatherings before, during,
29 and after school to the same extent that pupils are permitted to
30 organize other noncurricular pupil activities and groups. Religious
31 groups shall be given the same access to school facilities for
32 assembling as is given to other noncurricular groups without
33 discrimination based on the religious content of the students'
34 expression. If pupil groups that meet for nonreligious activities
35 are permitted to advertise or announce meetings of the groups, the
36 school district shall not discriminate against groups that meet for
37 prayer or other religious speech. A school district may disclaim
38 school sponsorship of noncurricular groups and events in a manner
39 that neither favors nor disfavors groups that meet to engage in
40 prayer or religious speech.

1 (g) *This section shall not apply to a private secondary school*
2 *that is controlled by a religious organization.*

3 SEC. 3. Section 48950.2 is added to the Education Code, to
4 read:

5 48950.2. (a) If a school district adopts and follows the model
6 policy governing voluntary religious expression in public schools
7 as defined in subdivision (b), the district is in compliance with the
8 provisions of Section 48950.1 covered by the model policy.

9 (b) As used in this section, “model policy” means a local policy
10 adopted by the school district that is substantially identical to the
11 following:

12
13
14 ARTICLE I

15 PUPIL EXPRESSION OF RELIGIOUS VIEWPOINTS

16 The school district shall treat a pupil’s voluntary expression of
17 a religious viewpoint, if any, on an otherwise permissible subject
18 in the same manner the district treats a pupil’s voluntary expression
19 of a secular or other viewpoint on an otherwise permissible subject
20 and may not discriminate against the pupil based on a religious
21 viewpoint expressed by the pupil on an otherwise permissible
22 subject.

23
24
25 ARTICLE II

26 PUPIL SPEAKERS AT NONGRADUATION EVENTS

27 The school district hereby creates a limited public forum for
28 pupil speakers at all school events at which a pupil is to speak
29 publicly. For each speaker, the district shall set a maximum time
30 limit reasonable and appropriate to the occasion. Pupil speakers
31 shall introduce:

- 32 (1) Football games.
33 (2) Any athletic events designated by the district.
34 (3) Opening announcements and greetings for the schoolday.
35 (4) Any additional events designated by the district, which may
36 include, without limitation, assemblies and pep rallies.

37 The forum shall be limited in the manner provided by this article.

38 Only those pupils in the highest two grade levels of the school
39 and who hold one of the following positions of honor based on
40 neutral criteria are eligible to use the limited public forum: student

1 council officers, class officers of the highest grade level in the
2 school, captains of the football team, and other pupils holding
3 positions of honor as the school district may designate.

4 An eligible pupil shall be notified of the pupil's eligibility, and
5 a pupil who wishes to participate as an introducing speaker shall
6 submit the pupil's name to the student council or other designated
7 body during an announced period of not less than three days. The
8 announced period may be at the beginning of the school year, at
9 the end of the preceding school year so pupil speakers are in place
10 for the new year, or, if the selection process will be repeated each
11 semester, at the beginning of each semester or at the end of the
12 preceding semester so speakers are in place for the next semester.
13 The names of the volunteering pupil speakers shall be randomly
14 drawn until all names have been selected, and the names shall be
15 listed in the order drawn. Each selected pupil will be matched
16 chronologically to the event for which the pupil will be giving the
17 introduction. Each pupil may speak for one week at a time for all
18 introductions of events that week, or rotate after each speaking
19 event, or otherwise as determined by the district. The list of pupil
20 speakers shall be chronologically repeated as needed, in the same
21 order. The district may repeat the selection process each semester
22 rather than once a year.

23 The subject of the pupil introductions must be related to the
24 purpose of the event and to the purpose of marking the opening
25 of the event, honoring the occasion, the participants, and those in
26 attendance, bringing the audience to order, and focusing the
27 audience on the purpose of the event. The subject must be
28 designated, a pupil must stay on the subject, and the pupil may not
29 engage in obscene, vulgar, offensively lewd, or indecent speech.
30 The school district shall treat a pupil's voluntary expression of a
31 religious viewpoint, if any, on an otherwise permissible subject in
32 the same manner the district treats a pupil's voluntary expression
33 of a secular or other viewpoint on an otherwise permissible subject
34 and may not discriminate against the pupil based on a religious
35 viewpoint expressed by the student on an otherwise permissible
36 subject.

37 For as long as there is a need to dispel confusion over the
38 nonsponsorship of the pupil's speech, at each event in which a
39 pupil will deliver an introduction, a disclaimer shall be stated in
40 written or oral form, or both, such as, "The pupil giving the

1 introduction for this event is a volunteering pupil selected on
2 neutral criteria to introduce the event. The content of the
3 introduction is the private expression of the pupil and does not
4 reflect the endorsement, sponsorship, position, or expression of
5 the school district.”

6 Certain pupils who have attained special positions of honor in
7 the school have traditionally addressed school audiences from time
8 to time as a tangential component of their achieved positions of
9 honor, such as the captains of various sports teams, student council
10 officers, class officers, homecoming kings and queens, prom kings
11 and queens, and the like, and have attained their positions based
12 on neutral criteria. Nothing in this policy eliminates the
13 continuation of the practice of having these pupils, irrespective of
14 grade level, address school audiences in the normal course of their
15 respective positions. The school district shall create a limited public
16 forum for the speakers and shall treat a pupil’s voluntary expression
17 of a religious viewpoint, if any, on an otherwise permissible subject
18 in the same manner the district treats a pupil’s voluntary expression
19 of a secular or other viewpoint on an otherwise permissible subject
20 and may not discriminate against the pupil based on a religious
21 viewpoint expressed by the pupil on an otherwise permissible
22 subject.

23
24
25

ARTICLE III

PUPIL SPEAKERS AT GRADUATION CEREMONIES

26 The school district hereby creates a limited public forum
27 consisting of an opportunity for a pupil to speak to begin graduation
28 ceremonies and another pupil to speak to end graduation
29 ceremonies. For each speaker, the district shall set a maximum
30 time limit reasonable and appropriate to the occasion.

31 The forum shall be limited in the manner provided by this article.

32 Only pupils who are graduating and who hold one of the
33 following neutral criteria positions of honor shall be eligible to
34 use the limited public forum: student council officers, class officers
35 of the graduating class, the top three academically ranked
36 graduates, or a shorter or longer list of student leaders as the school
37 district may designate. A student who will otherwise have a
38 speaking role in the graduation ceremonies is ineligible to give the
39 opening and closing remarks. The names of the eligible
40

1 volunteering pupils will be randomly drawn. The first name drawn
2 will give the opening and the second name drawn will give the
3 closing.

4 The topic of the opening and closing remarks must be related to
5 the purpose of the graduation ceremony and to the purpose of
6 marking the opening and closing of the event, honoring the
7 occasion, the participants, and those in attendance, bringing the
8 audience to order, and focusing the audience on the purpose of the
9 event.

10 In addition to the pupils giving the opening and closing remarks,
11 certain other pupils who have attained special positions of honor
12 based on neutral criteria, including, without limitation, the
13 valedictorian, will have speaking roles at graduation ceremonies.
14 For each speaker, the school district shall set a maximum time
15 limit reasonable and appropriate to the occasion and to the position
16 held by the speaker. For this purpose, the district creates a limited
17 public forum for these pupils to deliver the addresses. The subject
18 of the addresses must be related to the purpose of the graduation
19 ceremony, marking and honoring the occasion, honoring the
20 participants and those in attendance, and the pupil's perspective
21 on purpose, achievement, life, school, graduation, and looking
22 forward to the future.

23 The subject must be designated for each pupil speaker, the pupil
24 must stay on the subject, and the pupil may not engage in obscene,
25 vulgar, offensively lewd, or indecent speech. The school district
26 shall treat a pupil's voluntary expression of a religious viewpoint,
27 if any, on an otherwise permissible subject in the same manner the
28 district treats a pupil's voluntary expression of a secular or other
29 viewpoint on an otherwise permissible subject and may not
30 discriminate against the pupil based on a religious viewpoint
31 expressed by the pupil on an otherwise permissible subject.

32 A written disclaimer shall be printed in the graduation program
33 that states,—~~The~~ “*Each* pupil who will be speaking at the
34 graduation ceremony ~~were~~ *was* selected based on neutral criteria
35 to deliver ~~messages of the pupil's own choices~~ *a message of the*
36 *pupil's own choice*. The content of each student speaker's message
37 is the private expression of the individual student and does not
38 reflect any position or expression of the school district ~~or~~, the board
39 of trustees, ~~or~~ the district's administration, ~~or~~ employees of the
40 district, or the views of any other graduate. The contents of these

1 messages were prepared by the pupil volunteers, and the district
 2 refrained from any interaction with pupil speakers regarding the
 3 student ~~pupil~~ *pupil's* viewpoints on permissible subjects.”
 4
 5

6 ARTICLE IV

7 RELIGIOUS EXPRESSION IN CLASS ASSIGNMENTS

8 Pupils may express their beliefs about religion in homework,
 9 artwork, and other written and oral assignments free from
 10 discrimination based on the religious content of the pupils’
 11 submission. Homework and classroom work shall be judged by
 12 ordinary academic standards of substance and relevance and against
 13 other legitimate pedagogical concerns identified by the school.
 14 Pupils may not be penalized or rewarded on account of religious
 15 content. If a teacher’s assignment involves writing a poem, the
 16 work of a student who submits a poem in the form of a prayer or
 17 a psalm, shall be judged on the basis of academic standards,
 18 including literary quality, and not penalized or rewarded on account
 19 of its religious content.
 20

21 ARTICLE V

22 FREEDOM TO ORGANIZE RELIGIOUS GROUPS AND
 23 ACTIVITIES
 24

25 Pupils may organize prayer groups, religious clubs, “see you at
 26 the pole” gatherings, and other religious gatherings before, during,
 27 and after school to the same extent that pupils are permitted to
 28 organize other noncurricular pupil activities and groups. Religious
 29 groups must be given the same access to school facilities for
 30 assembling as is given to other noncurricular groups, without
 31 discrimination based on the religious content of the group’s
 32 expression. If pupil groups that meet for nonreligious activities
 33 are permitted to advertise or announce the groups’ meetings, for
 34 example, by advertising in a pupil newspaper, putting up posters,
 35 making announcements on a pupil activities bulletin board or public
 36 address system, or handing out leaflets, school authorities shall
 37 not discriminate against groups that meet for prayer or other
 38 religious speech. School authorities may disclaim sponsorship of
 39 noncurricular groups and events, provided they administer the

1 disclaimer in a manner that does not favor or disfavor groups that
2 meet to engage in prayer or other religious speech.

3 (c) *This section shall not apply to a private secondary school*
4 *that is controlled by a religious organization.*

5
6

7 *SEC. 4. Section 48950.3 is added to the Education Code, to*
8 *read:*

9 *48950.3. (a) Sections 48950.1 and 48950.2 may be enforced*
10 *through a civil action. A pupil who is enrolled at a school in a*
11 *school district at the time that the school or school district has*
12 *made or enforced a rule in violation of Section 48950.1 or 48950.2,*
13 *or the parent or legal guardian of the pupil, may commence a civil*
14 *action to obtain appropriate injunctive and declaratory relief, and*
15 *damages, as determined by a court. Upon motion, a court may*
16 *award attorney’s fees to a prevailing plaintiff in a civil action*
17 *pursuant to this section.*

18 (b) *Any person who denies the rights provided in Sections*
19 *48950.1 or 48950.2 to a pupil, or who aids or incites another to*
20 *deny those rights, is liable for each and every instance for actual*
21 *and exemplary damages in an amount to be determined by a jury,*
22 *or by a court sitting without a jury, for not less than four thousand*
23 *dollars (\$4,000) nor more than twenty-five thousand dollars*
24 *(\$25,000) per occurrence.*

25 (c) *Nothing in this section shall be construed to require an*
26 *exhaustion of any administrative complaint process or of the Tort*
27 *Claims Act (Division 3.6 (commencing with Section 810) of Title*
28 *1 of the Government Code) before civil remedies may be pursued.*

29 (d) *This section shall not apply to a private secondary school*
30 *that is controlled by a religious organization.*

31 ~~SEC. 4.~~

32 *SEC. 5. If the Commission on State Mandates determines that*
33 *this act contains costs mandated by the state, reimbursement to*
34 *local agencies and school districts for those costs shall be made*
35 *pursuant to Part 7 (commencing with Section 17500) of Division*
36 *4 of Title 2 of the Government Code.*

37 ~~SEC. 5.~~

38 *SEC. 6. This act is an urgency statute necessary for the*
39 *immediate preservation of the public peace, health, or safety within*

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 In order to prevent punishment of pupils who engage in voluntary
4 expression of a religious viewpoint, it is necessary that this act
5 take effect immediately.

O